

# **Graham Ex. C**

## FTC, et al. v. Quincy Bioscience Holding, et al.

8/21/2020

1 (Pages 1 to 4)

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			5
1	EXHIBITS	DESCRIPTION	FOR ID
2	Number MU-35 12/18/15	Underwood/Beaman	118
3	Email Re: Prevagen		
4	Scientific Summary		
5	Number MU-36 12/15/18	Underwood/Beaman	142
6	Email Re: Systemic Review		
7	of Prevagen Science		
8	Number MU-37 Underwood/Prendamano	Email	145
9	Number MU-38 11/1/10 Underwood/Klein		150
10	Email Exchange		
11	Number MU-39 3/19/14 Adams/Moran	Email	162
12	Number MU-40 5/22/15 Underwood/Moran		168
13	Email Exchange		
14	Number MU-41 Quincy GRAS Submission		175
15	Number MU-42 10/16/12 FDA Warning Letter		181
16	Number MU-43 7/5/11 Beaman/Dvorak	Email	191
17	Number MU-44 Underwood/Beaman	Email Re:	195
18	Congressman Burgess		
19	Number MU-45 11/23/15 Warren/Underwood		199
20	Email Exchange		
21	Number MU-46 Prevagen Professional		201
22	Markup		
23	Number MU-47 7/25/14		203
24	Underwood/Olson/Lerner		
25	Email Exchange		
23	OTHER EXHIBITS REFERENCED	PAGE	
24	MU-3	64	

1 Kelley Drye & Warren, LLP. I have with me my  
 2 colleagues, Jaclyn Metzinger and Glenn Graham on behalf  
 3 of the corporate defendants. Also appearing today on  
 4 behalf of Defendant Mark Underwood, Michael deLeeuw and  
 5 Tamar Wise, Cozen O'Connor, LLP.  
 6 VIDEO TECHNICIAN: Would the court reporter  
 7 please swear in the witness.  
 8 Whereupon--  
 9 MARK YANCEY UNDERWOOD  
 10 a witness, called for examination, having been first  
 11 duly sworn, was examined and testified as follows:  
 12 MS. SOBERATS: Mr. Castello, before we get  
 13 started, I think you're muted.  
 14 MR. CASTELLO: I'm not muted, I'm having a  
 15 problem with my headset here. Go ahead, Annette.  
 16 MS. SOBERATS: I thought before we would get  
 17 started, we would discuss the agreement that we reached  
 18 yesterday. Yesterday the parties reached an agreement  
 19 on the duration of Mr. Underwood's 30(b)(6) deposition  
 20 and his deposition in his individual capacity. We  
 21 agreed that for the portion of the 30(b)(6), the  
 22 Plaintiffs would be entitled to five hours of testimony,  
 23 and for the individual deposition, Plaintiffs would have  
 24 seven hours of testimony. One of the terms of that  
 25 agreement was, based on my understanding, that Mr.

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1	P R O C E E D I N G S		
2	- - - - -		
3	VIDEO TECHNICIAN: Here begins disk 1 in the		
4	video deposition of Mark Underwood as an individual,		
5	taken in the matter of Federal Trade Commission, et al.		
6	v. Quincy Bioscience Holding Company, Inc., et al. in		
7	the United States District Court, Southern District of		
8	New York, Case Number 1:17-cv-00124-LLS.		
9	Today's date is August 21st, 2020, and the time		
10	on the video monitor is 8:34 a.m. Central Daylight time.		
11	This deposition is being held remotely via		
12	videoconference. The court reporter is Sally Quade on		
13	behalf of For The Record. The video camera operator is		
14	Isaac Hoerner on behalf of For The Record.		
15	Will counsel please introduce themselves and		
16	state whom they represent, beginning with the party		
17	noticing the deposition.		
18	MS. SOBERATS: Good morning. Appearing for the		
19	Federal Trade Commission are attorneys Annette Soberats,		
20	Michelle Rusk and Edward Glennon, and investigator Will		
21	Ducklow.		
22	MS. MATUSCHAK: And this is Kate Matuschak on		
23	behalf of the office of the New York State Attorney		
24	General.		
25	MR. CASTELLO: Good morning. Geoffrey Castello,		

1 Underwood's testimony as a 30(b)(6) witness would be  
 2 adopted into his testimony as an individual -- as an  
 3 individual witness.  
 4 I just wanted to place that stipulation on the  
 5 record at the beginning and give you an opportunity to  
 6 add anything that you would like to add.  
 7 MR. CASTELLO: Sure. At this point, I, of  
 8 course, we don't know what questions you intend to ask  
 9 today, I would ask, respectfully, that you not cover  
 10 ground that was explicitly covered yesterday. In that  
 11 case, Mr. Underwood would adopt his testimony from  
 12 yesterday in his role as a 30(b)(6) designee, as his  
 13 role today as an individual witness.  
 14 MS. SOBERATS: Okay, and I --  
 15 MR. CASTELLO: And just to make sure that  
 16 Mr. DeLeeuw agrees with that.  
 17 MR. DELEEUW: Absolutely.  
 18 MS. SOBERATS: And I will just clarify that I  
 19 did state yesterday that nothing in our agreement barred  
 20 Plaintiffs from covering the same topics, so long as  
 21 they were asking new questions.  
 22 MR. CASTELLO: I agree. I do, Annette, have to  
 23 take this on a question-by-question basis, and I'll let  
 24 Mr. DeLeeuw speak for himself, but I certainly intend to  
 25 stick with the spirit of our agreement in practical

2 (Pages 5 to 8)

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1 MR. CASTELLO: I'm going to caution the witness  
2 that if in order to answer that question he be required  
3 to divulge any communication that the company had with  
4 counsel, that he not answer the question.

5 THE WITNESS: Yeah, I'll have to heed Geoff's  
6 counsel.

7 BY MS. SOBERATS:

8 [REDACTED]

21 Q. And does it refer to Quincy's interpretations of  
22 the results for the Groton Maze Recall task?

23 MR. CASTELLO: I'm going to caution the witness  
24 that if in order to answer that question he be required  
25 to divulge any information that the company had with

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1 [REDACTED]

1 counsel, that he not answer that question.

2 THE WITNESS: I'm going to have to follow  
3 Geoff's counsel.

4 BY MS. SOBERATS:

5 [REDACTED]

8 MR. CASTELLO: Is that question independent of  
9 communications that the company had with counsel?

10 MS. SOBERATS: Yes.

11 MR. CASTELLO: So to the extent that the witness  
12 can answer independent of any independent communications  
13 that the company may have had with counsel on that  
14 subject, he can answer.

15 [REDACTED]

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1 BY MS. SOBERATS:

2 Q. And did you approve edits to Prevagen's  
3 packaging?

4 A. I would be one of the people that approved edits  
5 to Prevagen's packaging, but not the sole individual.

6 Q. Who else would approve edits to Prevagen's  
7 packaging?

8 A. Internally, people that are part of our  
9 marketing and advertising team, as well as counsel.

10 Q. Does Mr. Beaman approve edits to Prevagen's  
11 packaging?

12 A. He does not.

13 Q. Is he consulted before substantive changes to  
14 Prevagen's packaging?

15 A. He is not.

16 Q. Let's talk about the Brain Health Guide for a  
17 few moments. Have there been five editions to the Brain  
18 Health Guide?

19 A. I don't know exactly.

20 Q. Okay. Have you authored all of the editions of  
21 the Brain Health Guide?

22 A. I have not.

23 Q. Who else has authored them?

24 A. We have different content contributors, both  
25 inside the company and outside the company.

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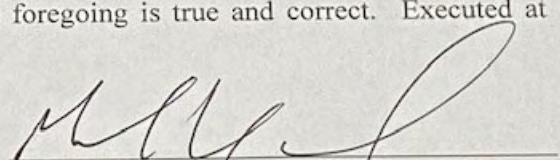
	85		87
1	A. Yeah.	1	<b>Q. And Mr. Underwood, you testified earlier that you have communications multiple times a week with Mr. Underwood -- Mr. Beaman, pardon. And that you keep him informed on research. Why do you keep Mr. Beaman informed on research?</b>
2	<b>Q. And I'd like you to turn to page 6, and just for the record, these are Defendant Quincy Bioscience Holding Company, Inc.'s Responses -- Answers to the FTC's Civil Investigative Demand Interrogatories. If you go to page 6, Mr. Underwood, I'd like you to look at interrogatory 4. The answer lists you, Mark Underwood, as president and it states that you're involved in translation of scientific data into marketing language. Can you explain to me what that means?</b>	2	A. Well, it does affect some of the bigger picture items in our company, and so I mean, he's interested in how well the company is doing. He's interested in things like, you know, what the future might hold in terms of what we're looking at developing and the path we're going for the future.
3		3	So, yeah, I do inform them of what's going on with research, although we do talk several times a week, we rarely talk about research because we don't have research updates several times a week. We have operational things, the basic running of the business that, you know, we might discuss, you know, one topic or the next.
4		4	<b>Q. And has he requested to have these regular communications with you?</b>
5		5	A. No.
6		6	MR. CASTELLO: Objection.
7		7	THE WITNESS: And by regular, they're not -- they're not programmed, they're not scheduled. They're on occasion. I haven't talked with Mike on the phone
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1	them. So if data comes out of a lab that maybe shows some sort of like -- I'll call it a disease-like response, or dizzy -- treatment like, you know, status, even though that's scientifically valid, we have to make sure that we don't convey that to a consumer because it would become an issue with perhaps the Food and Drug Administration.	1	for a couple weeks, actually. At this current date.
2	So part of it is, again, you knew, clear communication to the consumer, and part of it is making sure that we know our audience so that we don't break a rule when it comes to sharing what we might have learned, we don't necessarily have the right to share that fully with a consumer audience because of the regulations we fall under.	2	BY MS. SOBERATS:
3		3	<b>Q. Has Mr. Beaman requested to have communications with you multiple times a week?</b>
4		4	A. No.
5		5	MR. DELEEUW: Object to the form.
6		6	BY MS. SOBERATS:
7		7	<b>Q. And do you feel that you need to keep Mr. Beaman updated on developments at Quincy?</b>
8		8	MR. CASTELLO: Objection.
9		9	MR. DELEEUW: Object to the form.
10		10	THE WITNESS: No, I don't.
11		11	BY MS. SOBERATS:
12		12	<b>Q. I want to talk specifically about the Madison Memory Study. What was your role in that study?</b>
13		13	A. Well, similar to what we talked about for my role in other -- you know, in clinical studies and preclinical studies. The same -- the same type of thing. Helping to organize the staff that conducts the research, looking at the overall goals or aims of the study. You know, I guess participating in the concepts of what we wanted the protocol or the study goals to be, and then letting our staff execute on those goals.
14		14	<b>Q. Did you review the recruitment ads for the Madison Memory Study?</b>
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22 (Pages 85 to 88)

I, Mark Underwood, hereby certify that I have read and examined the transcript of the deposition of Mark Underwood, which occurred on August 21, 2020, and hereby make the following corrections to the transcript of my deposition:

PAGE	LINE(S)	CORRECTION	REASON
18	25	Replace "syllabus" with "similar"	Transcription error
43	22	Replace "established" with "establish"	Transcription error
82	18	Replace "Milwaukee Journal" with "Milwaukee Business Journal"	Transcription error
153	10	Replace "acquorin" with "aequorin"	Typo

I declare under penalty of perjury that the foregoing is true and correct. Executed at Madison, Wisconsin on September 21, 2020.



MARK UNDERWOOD